

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 SHANA LEE MCCART-POLLAK,) Case No. 2:17-cv-00042-RFB-CWH
4)
5 Plaintiff,)
6 vs.) **PROTECTIVE ORDER**
7)
8 EDWARD ETKIN, an individual; LAW)
9 OFFICES OF EDWARD ETKIN, ESQ. PC)
10 a New York business entity; DOES I)
11 Through X; ROE BUSINESS ENTITIES)
12 I through X, inclusive,)
13 Defendants.)

14 Pursuant to the Motion for Entry of Protective Order filed by Defendants Edward Etkin
15 and Law Offices of Edward Etkin, Esq. PC, and good cause appearing, it is HEREBY
16 ORDERED that the following Protective Order is entered in this case:

17 1. Any party or non-party may designate as confidential (by stamping the relevant
18 page with the word “**Confidential**” or as otherwise set forth herein) any document or response to
19 discovery which that party or non-party considers in good faith to contain information involving
20 trade secrets, or confidential business or financial information, subject to protection under the
21 Federal Rules of Civil Procedure or Nevada law (hereinafter referred to as “**Confidential**
22 **Information**”). Where a document or response consists of more than one page, the first page and
23 each page on which confidential information appears shall be so designated.

24 2. Any party may designate as confidential – attorney’s eyes only (by stamping the
25 relevant page with the word “**Attorney’s Eyes Only**” or as otherwise set forth herein) any
26 document or response to discovery which constitutes part of the United States Patent and
27 Trademark Office patent application file wrapper / file history (hereinafter referred to as
28 “**Attorney’s Eyes Only Information**”) and which is produced subsequent to December 8, 2017.

1 Where a document or response consists of more than one page, the first page and each page on
2 which confidential information appears shall be so designated.

3 3. A party or non-party may designate information disclosed during a deposition or
4 in response to written discovery as "confidential" by so indicating in said response or on the
5 record at the deposition and requesting the preparation of a separate transcript of such material.
6 Additionally a party or non-party may designate in writing, within twenty (20) days after receipt
7 of said responses or of the deposition transcript for which the designation is proposed, that
8 specific pages of the transcript and/or specific responses be treated as "confidential" information.
9 Any other party may object to such proposal, in writing or on the record. Upon such objection,
10 the parties shall follow the procedures described in paragraph 10 below. After any designation
11 made according to the procedure set forth in this paragraph, the designated documents or
12 information shall be treated according to the designation until the matter is resolved according to
13 the procedures described in paragraph 10 below, and counsel for all parties shall be responsible
14 for marking all previously unmarked copies of the designated material in their possession or
15 control with the specified designation.
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18 4. All information produced or exchanged in the course of this case (other than
19 information that is publicly available) shall be used by the party or parties to whom the
20 information is produced solely for the purpose of this case, unless the parties agree otherwise.

21 5. Except with the prior written consent of other parties, or upon prior order of this
22 Court obtained upon notice to opposing counsel, **Confidential Information** shall not be
23 disclosed to any person other than:
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25 (a) counsel for the respective parties to this litigation, including co-counsel
26 retained for this litigation;

27 (b) employees of such counsel;
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1 (c) the parties, including any officer or employee of a party, to the extent
2 deemed necessary by counsel for the prosecution or defense of this litigation;

3 (d) consultants or expert witnesses retained for the prosecution or defense of
4 this litigation, provided that each such person shall execute a copy of the Certification
5 annexed to this Order as Exhibit "A" (which shall be retained by counsel to the party so
6 disclosing the Confidential Information and made available for inspection by opposing
7 counsel during the pendency or after the termination of the action only upon good cause
8 shown and upon order of the Court) before being shown or given any Confidential
9 Information;

10 (e) any authors or recipients of the Confidential Information;

11 (f) the Court, Court personnel, and court reporters; and

12 (g) witnesses (other than persons described in paragraph 4(e)). A witness shall
13 sign the Certification before being shown a confidential document. Confidential
14 Information may be disclosed to a witness who will not sign the Certification only in a
15 deposition at which the party who designated the Confidential Information is represented
16 or has been given notice that Confidential Information shall be designated "Confidential"
17 pursuant to paragraph 2 above. Witnesses shown Confidential Information shall not be
18 allowed to retain copies.

19 6. Except with the prior written consent of other parties, or upon prior order of this
20 Court obtained upon notice to opposing counsel, **Attorney's Eyes Only Information** shall not
21 be disclosed to any person other than:

22 (a) counsel for the parties to this litigation (and Plaintiff, who is *pro per*);

23 (b) employees of such counsel;

24 (c) consultants or expert witnesses retained for the defense of this litigation,
25 provided that each such person shall execute a copy of the Certification annexed to this
26 Order as Exhibit "A" (which shall be retained by counsel to the party so disclosing the
27 Attorney's Eyes Only Information and made available for inspection by opposing counsel
28 during the pendency or after the termination of the action only upon good cause shown

1 and upon order of the Court) before being shown or given any Attorney's Eyes Only
2 Information;

3 (d) the Court, Court personnel, and court reporters.

4 7. Any persons receiving Confidential Information and/or Attorney's Eyes Only
5 Information shall not reveal or discuss such information to or with any person who is not entitled
6 to receive such information, except as set forth herein. Attorney's Eyes Only Information shall
7 not be provided to or disclosed to Edward Etkin.

8 8. Unless otherwise permitted by statute, rule or prior court order, papers filed with
9 the court under seal shall be accompanied by a contemporaneous motion for leave to file those
10 documents under seal, and shall be filed consistent with the court's electronic filing procedures
11 (in the case of Defendants), or over the counter filing procedures (in the case of Plaintiff, who is
12 *pro per.*). Notwithstanding any agreement among the parties, the party seeking to file a paper
13 under seal bears the burden of overcoming the presumption in favor of public access to papers
14 filed in court. *Kamakana v. City and County of Honolulu*, 447 F.2d 1172 (9th Cir. 2006).

15 9. A party may designate as "Confidential" documents or discovery materials
16 produced by a non-party by providing written notice to all parties of the relevant document
17 numbers or other identification within thirty (30) days after receiving such documents or
18 discovery materials. Any party or non-party may voluntarily disclose to others without restriction
19 any information designated by that party or non-party as confidential, although a document may
20 lose its confidential status if it is made public.

21 10. If a party contends that any material is not entitled to confidential treatment, such
22 party may at any time give written notice to the party or non-party who designated the material.
23 The party or non-party who designated the material shall have twenty-five (25) days from the
24 receipt of such written notice to apply to the Court for an order designating the material as
25 confidential. The party or non-party seeking the order has the burden of establishing that the
26 document is entitled to protection.

1 11. Notwithstanding any challenge to the designation of material as Confidential
2 Information, all documents shall be treated as such and shall be subject to the provisions hereof
3 unless and until one of the following occurs:

4 (a) the party or non-party claims that the material is Confidential Information
5 withdraws such designation in writing; or

6 (b) the party or non-party who claims that the material is Confidential
7 Information fails to apply to the Court for an order designating the material confidential
8 within the time period specified above after receipt of a written challenge to such
9 designation; or

10 (c) the Court rules the material is not confidential.

11 12. All provisions of this Order restricting the communication or use of Confidential
12 Information and/or Attorney's Eyes Only Information shall continue to be binding after the
13 conclusion of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a
14 party in the possession of Confidential Information and/or Attorney's Eyes Only Information,
15 other than that which is contained in pleadings, correspondence, and deposition transcripts, shall
16 either (a) return such documents no later than thirty (30) days after conclusion of this action to
17 counsel for the party or non-party who provided such information, or (b) destroy such documents
18 within the time period upon consent of the party who provided the information and certify in
19 writing within thirty (30) days that the documents have been destroyed.

20 13. The terms of this Order do not preclude, limit, restrict, or otherwise apply to the
21 use of documents at trial.

22 14. Nothing herein shall be deemed to waive any applicable privilege or work product
23 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
24 protected by privilege or work product protection.

25 15. Any witness or other person, firm or entity from which discovery is sought may
26 be informed of and may obtain the protection of this Order by written notice to the parties'
27 respective counsel or by oral advice at the time of any deposition or similar proceeding.
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EXHIBIT A

CERTIFICATION

I hereby certify my understanding that Confidential Information and/or Confidential – Attorney’s Eyes Only Information is being provided to me pursuant to the terms and restrictions of the Protective Order dated _____, in *Shana Lee McCart-Pollak v. Edward Etkin, et al.*, Case No. 2:17-cv-00042-RFB-CWH. I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not reveal the Confidential Information and/or Attorney’s Eyes Only Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information and/or Attorney’s Eyes Only Information (including copies, notes, or other transcriptions made therefrom) in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information and/or Attorney’s Eyes Only Information (including copies, notes or other transcriptions made therefrom) to the counsel who provided me with the Confidential Information and/or Attorney’s Eyes Only Information. I hereby consent to the jurisdiction of the United States District Court for the purpose of enforcing the Protective Order.

DATED: _____

BY: _____

IT IS ORDERED that the proposed protective order (ECF No. 65) is GRANTED.

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UNITED STATES MAGISTRATE JUDGE

DATED: January 22, 2018